

REVISED LAWS OF MINNESOTA *94*

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
FRANCIS B. TIFFANY

ST. PAUL
WEST PUBLISHING CO.

1910

in such selected homestead, and thereupon, if the proper purposes of such foreclosure require, he shall offer for sale and shall sell separately that part of the mortgaged real estate included in such selected homestead, provided that if such homestead claimant shall have prior to such foreclosure made a property homestead selection from his real estate he shall be bound thereby, and cannot change the same for the purposes of such foreclosure. ('07 c. 389)

Historical.—"An act to protect the rights of homestead claimants in proceedings to foreclose real estate mortgages and to provide that such homestead shall be offered for sale as a separate parcel only." Approved April 24, 1907.

CHAPTER 84.

ACTIONS BY OR AGAINST PERSONAL REPRESENTATIVES AND HEIRS.

4502. What causes of action survive.

Application in general.—A cause of action for malicious attachment held an injury to property, and not to the person, so as to pass to a trustee in bankruptcy. *Hansen Mercantile Co. v. Wyman, Partridge & Co.*, 105 Minn. 491, 117 N. W. 926.

4503. Action for death by wrongful act.

Application in general.—Where, after verdict, in an action for personal injuries, plaintiff dies, this section does not apply. *Clay v. Chicago, M. & St. P. R. Co.*, 104 Minn. 1, 115 N. W. 949.

This section includes among its beneficiaries a nonresident alien having the prescribed relationship. *Mahoning Ore & Steel Co. v. Blomfelt*, 163 Fed. 827, 91 C. C. A. 390.

See note under section 4064.

Action under foreign statute.—A right of action, given by a statute of North Dakota to the surviving spouse, children, or personal representative, in the order named, of a person killed by the wrongful act or neglect of another, to recover, without limit, such damages as are proportionate to the injury resulting from his death, for the benefit of his heirs in such shares as the trial judge shall fix, will be enforced in this state. *Powell v. Great Northern R. Co.*, 102 Minn. 448, 113 N. W. 1017; followed in *Matthey v. Great Northern R. Co.*, 103 Minn. 525, 114 N. W. 1133.

In an action here for wrongful killing in another state, plaintiff must plead the statute of that state, which creates the liability. *Stewart v. Great Northern Ry. Co.*, 103 Minn. 156, 114 N. W. 953, 123 Am. St. Rep. 318.

Personal representative.—A special administrator is a "personal representative" of decedent. *Jones v. Minnesota Transfer R. Co.*, 121 N. W. 606.

Defenses—Contributory negligence of parent.—In an action by a father as administrator to recover for the death of a minor child, the negligence of the father which contributed to the injury will bar a recovery. In determining whether due care was exercised, the jury may consider the place of the accident, the character of the community, the intelligence of the people, and the means and opportunities at command in connection with the other circumstances. *Mattson v. Minnesota & N. W. R. Co.*, 98 Minn. 296, 108 N. W. 517.

Release.—A release fraudulently made by the administrator, the adverse party participating in the fraud, is not a bar to an action by a succeeding administrator. *Aho v. Jesmore*, 101 Minn. 449, 112 N. W. 538, 10 L. R. A. (N. S.) 998.

An administrator made an alleged fraudulent settlement with defendant of the cause of action for death and delivered a release. The probate court made an order approving the settlement and release. The widow, for herself and children, commenced an action against such administrator and defendant, which was dismissed without a trial on the merits, to recover damages sustained by reason of such fraudulent release. The widow, as administratrix de bonis, afterwards brought action to recover damages for the death. Held that, if the release was fraudulent, neither it nor the commencement of the prior action by the widow is a bar to this action. *Aho v. Republic Iron & Steel Co.*, 104 Minn. 322, 116 N. W. 590.

See, also, *Johnson v. Minneapolis & St. L. R. Co.*, 101 Minn. 396, 112 N. W. 534; *Picciano v. Duluth, M. & N. R. Co.*, 102 Minn. 21, 112 N. W. 885.

— **Jurisdiction of probate court.**—Under Const. art. 6, § 7, the statute giving a cause of action for death to the administrator in trust for the bene-

ficiaries does not give the probate court power to administer the trust, and its approval of a settlement by such administrator and release was without jurisdiction. *Aho v. Republic Iron & Steel Co.*, 104 Minn. 322, 116 N. W. 590.

The probate court has no jurisdiction to distribute funds recovered by an administrator under this section. The distribution rests with the district court. *Mayer v. Mayer*, 106 Minn. 484, 119 N. W. 217.

Pleading.—A complaint which alleges that deceased left surviving him a certain person as his next of kin and heir at law, without stating the relation of such person, or that deceased left no widow, is good as against a demurrer. *Lahti v. Oliver Iron Min. Co.*, 106 Minn. 241, 118 N. W. 1018.

Evidence.—Evidence held sufficient to sustain a finding that defendant's negligence was the proximate cause of death. *Moore v. Northern Pac. R. Co.*, 121 N. W. 392.

The fact that a patient dies immediately after an operation is not of itself evidence of negligence of the operating surgeon. *Staloch v. Holm*, 100 Minn. 276, 111 N. W. 264, 9 L. R. A. (N. S.) 712.

Evidence held insufficient to establish that death was caused by injuries in a railroad accident; it being conceded that decedent died of peritonitis within five days after childbirth and five months after the accident. *Mageau v. Great Northern R. Co.*, 102 Minn. 399, 113 N. W. 1016.

As to the presumption that one who was killed while crossing a railway track looked and listened before attempting to cross, see *Carlson v. Chicago & N. W. Ry. Co.*, 96 Minn. 504, 105 N. W. 555, 4 L. R. A. (N. S.) 349, 113 Am. St. Rep. 655.

Damages.—Where the relation is such that the beneficiary would have been entitled of right to support from decedent, the law presumes the life to be of some value; and this presumption was not conclusively overcome by the fact that decedent, a lad of 17, was self-supporting, and that the father lived in another state and had demanded no pecuniary assistance for three years. A verdict of \$1,000 was not excessive. *Youngquist v. Minneapolis St. Ry. Co.*, 102 Minn. 501, 114 N. W. 259.

Where deceased was 24 years old, strong, sober, industrious, and intelligent, and was survived by a widow 23 years old and an infant child, a verdict of \$5,000 was not excessive. *Balder v. Zenith Furnace Co.*, 103 Minn. 345, 114 N. W. 948.

Where deceased was a young, unmarried man, 23 years old, of good habits and sound body and mind, and left a father and mother of the ages of 64 and 59, respectively, a verdict of \$3,000 was not excessive. *Holden v. Great Northern R. Co.*, 103 Minn. 98, 114 N. W. 365.

Damages held excessive, and a new trial granted, unless the plaintiff consent to a reduction. *Bremer v. Minneapolis, St. P. & S. S. M. R. Co.*, 96 Minn. 400, 105 N. W. 494.

Recovery as a bar.—Where damages to a wife, resulting from defendant's fault, have in no part been caused by her wrong, two causes of action may accrue—one to her, for the direct injuries to her person; the other to her husband, for the consequential injuries to him. That such injuries have resulted in her death, and that a recovery has been had under the statute by the administrator, is no bar to the action by the husband. *Mageau v. Great Northern R. Co.*, 103 Minn. 290, 115 N. W. 651, 946, 15 L. R. A. (N. S.) 511.

CHAPTER 85.

OFFICIAL AND OTHER BONDS—FINES AND FORFEITURES.

4524. Modes of justification.—The justification of sureties mentioned in section 4523 shall be by affidavit, annexed to the bond or other security, wherein each surety shall state under oath that he is worth a certain definite amount above his debts and liabilities and exclusive of his property exempt from execution, but the aggregate of the amount sworn to as aforesaid by all the sureties shall be not less than double the amount of the penalty of such bond or other security. Where in the cases provided by law exception is taken to sureties, they shall be examined by the judge or officer before whom they are required to attend for purposes of justification, in such manner as he shall deem proper. The examination shall be reduced to writing and filed in the cause, and, if the judge